IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

WRIT PETITION NO.3025 OF 1991

Smt.Harsha H. Shah
residing at 21, Delstar, 9
Hughes Road, Bombay 400 036. Petitioner

vs.

1. Commissioner of Income-tax,
Aayakar Bhavan, Bombay City I
Bombay-400 020.

2. I.T.O. Headquarters I,
Aayakar Bhavan, Bombay-400020.

3. I.T.O., Ward 13(9), Aayakar
Bhavan, Bombay-20.

4. Union of India. Respondents

Mr.S.P.Kanuga for the petitioner.

CORAM : R.M. LODHA &
ANOOP V. MOHTA, JJ.

DATED : 17th January 2006

ORAL JUDGMENT (Per R.M.Lodha,J.)

By means of this writ petition filed under Article 226 of the Constitution of India, the petitioner prays for direction to the respondents to release her jewellery seized on 25th September, 1982 pursuant to search made at her residence on 31st August, 1982. The petitioner has also prayed for direction to the respondents to pay compensation for wrongfully withholding her jewellery.

2. Smt.Harsha H. Shah - the petitioner has stated in the writ petition that her husband carries on business

in the name and style of M/s.Shah & Shah Films. The said firm is assessed to income tax under the provisions of the Income Tax Act, 1961. On 31st August, 1982, the officers of the Income Tax Department searched the residential premises of the petitioner and seized the jewellery consisting of necklaces, bangles, rings, chains etc. as described in the panchanama drawn by them. The concerned authority treated the said jewellery as belonging to M/s.Shah & Shah Films and issued prohibitory order under Section 132(3) of the Income Tax Act. By a further order passed on 25th September, 1982, the seizure of the said jewellery was ordered until further orders. The said jewellery was valued at Rs.1,31,272/- (Rupees one lac thirty one thousand two hundred seventy two) by the Department's valuer. While completing the assessment of the firm-M/s.Shah & Shah Films on 30th October, 1986, the petitioner's jewellery was treated in the hands of M/s.Shah & Shah Films and its value at Rs.1,31,272/- was added to the income of M/s.Shah & Shah Films. Aggrieved by the order of the Assessing Officer, M/s.Shah & Shah Films preferred an appeal before the Commissioner of Income Tax (Appeals) II, Bombay. The Commissioner of Income Tax (Appeals) II, Bombay accepted the submission of M/s.Shah & Shah Films for deletion of Rs.1,31,272/- from their income as the jewellery did not belong to them. The petitioner who was the owner of the jewellery then made an application to the Commissioner of Income

Tax, Bombay City I and also to the Income Tax Officer, Ward 13(9) for release of her jewellery. The petitioner also sent many reminders through her Chartered Accountant. By the letter dated 25th July, 1991, the Commissioner of Income Tax, Bombay City I informed the petitioner that since the concerned Officer has not issued the no-objection certificate, the jewellery cannot be released to her. The petitioner then took up the matter for issuance of no objection certificate and at that time it was found that the no objection has already been issued by the concerned Income Tax Officer on 20th August, 1990 for releasing the petitioner's jewellery. The petitioner, through her Chartered Accountant, then again took up the matter with the concerned authority but of no avail. The facts that are available on record reveal that notice dated 9th July, 1991 to re-open the petitioner's assessment under Section 148 of the Income Tax Act was served on the petitioner on 26th July, 1991. Though various objections were raised by the petitioner, the concerned Income Tax Officer passed the assessment order on 4th March, 1994 purporting to be under Section 143(3) read with Section 147(a) of Income Tax Act, 1961. The petitioner's total income was assessed at Rs.2,44,000/- being the value of the jewellery on 31st August 1982, that was seized on 25th September, 1982. The petitioner challenged the assessment order dated 4th March, 1994 in the Appeal before the Commissioner of Income Tax

(Appeals). The Appellate Authority allowed the appeal and ordered deletion of the entire amount of addition made of Rs.2,44,000/-. The Revenue went in further appeal before the Income Tax Appellate Tribunal. By the order dated 20th October, 1999 the Income Tax Appellate Tribunal dismissed the appeal filed by the Revenue and upheld the order of the Commissioner of Income Tax (Appeals). We are informed that the order passed by the Income Tax Appellate Tribunal dated 20th October, 1999 has attained finality.

3. On behalf of the respondents an affidavit in reply has been filed by E.B.Vijayan Nair, I.T.O. Ward 13(9), Bombay on 14th October, 1991. That the petitioner is wife of one of the partners of the firm M/s.Shah & Shah Films is admitted. It is stated in the reply affidavit that on 31st August, 1982 search was conducted in the premises of the said firm and jewellery worth Rs.1,31,272/- was seized. It is admitted that the value of the jewellery was treated as firm's income from the undisclosed source by the assessing officer, but the said income was deleted in the appeal by the Commissioner of Income Tax (Appeals). It is averred in the reply affidavit that as the petitioner did not file return for the year 1982-83, the notice under Section 148 of the Income Tax Act, 1961 was served on the petitioner on 26th July, 1991. It is stated that the petitioner has not filed the return until the date of

the filing of the reply affidavit despite the notice under Section 148. The case has been set up that the petitioner's house was earlier raided on 31st October, 1981 and jewellery worth Rs.44,000/- (Rupees forty four thousand) was found. Now in the raid conducted on 31st August, 1982, the jewellery worth Rs.1,31,272/- was found. The petitioner has to explain the acquisition of jewellery valuing Rs.87,272/- (Rupees eighty seven thousand two hundred seventy two).

4. The petitioner filed rejoinder on 21st October, 1991 and then filed additional affidavit on 20th December, 2005.

5. We heard Mr.S.P.Kanuga, the learned counsel for the petitioner. Nobody appears for the respondents.

6. From the narration of facts which we have been noticed above, it is clear that in the search of residential premises of the petitioner on 31st August, 1982, the jewellery valuing Rs.1,31,272/- was seized. Since the search was, according to the Income Tax Department, at the premises of one of the partners of the firm M/s.Shah & Shah Films, the value of the seized jewellery amounting to Rs.1,31,272/- was added to the firm's income from undisclosed source. The firm went in appeal and the Commissioner of Income Tax (Appeals) deleted that addition. It is, thus, clear that the

jewellery has not been treated as belonging to the firm by the Commissioner of Income Tax (Appeals) and that order has attained finality. The jewellery was treated as that belonging to the petitioner and since in the opinion of the concerned Income tax Officer, the return was not filed by the petitioner for the assessment year 1982-83, the notice under Section 148 of the Income Tax Act was served on the petitioner on 26th July, 1991. The assessing officer, pursuant to the notice under section 148 of the Income Tax Act, assessed the petitioner's total income at Rs.2,44,000/- (Rupees two lac forty four thousand) on account of income from undisclosed sources being the value of the jewellery found on 31st August, 1982 and seized on 25th September, 1982. The assessment order passed by the assessing officer on 4th March, 1994 purporting to be under Section 143(3) read with Section 147(a) came to be challenged by the petitioner in appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) vide order dated 31st October, 1994, set aside the order of the assessing officer and deleted the entire amount of Rs.2,44,000/- from the income of the petitioner. The Revenue went in appeal before the Income Tax Appellate Tribunal but failed there. There is nothing on record to indicate that the order passed by Income Tax Appellate Tribunal on 20th October, 1999 upholding the order of Commissioner of Income Tax (Appeals) has been challenged by the Revenue.

In view of the order passed by the Income Tax Appellate Tribunal on 20th October, 1999 and the earlier order passed by the Commissioner of Income Tax (Appeals) relating to the assessment of the firm-M/s.Shah & Shah Films, we are of the considered view that there is no justification in the act of the respondents in withholding the jewellery that was seized vide order dated 25th September, 1982, pursuant to the raid conducted at the residential premises of the petitioner on 31st August, 1982.

7. We, accordingly, allow the writ petition and direct the respondents to release the jewellery of the petitioner that was seized vide order dated 25th September, 1982 in the raid conducted on 31st August, 1982 within two weeks of the production of this Order before the respondent no.1 (Commissioner of Income Tax, Bombay City-I, Bombay). Since the respondents have not chosen to appear, we award no costs.

(R. M. LODHA, J.)

(ANOOP V. MOHTA, J.)